

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Case No.: 08 CV 1093

GEORGE W. BROWN,

Plaintiff,

ANSWER

-against-

THE BROOKDALE HOSPITAL MEDICAL CENTER,
SANJEEV RAJPAL, M.D., CLASS SURGERY
BROOKLYN GROUP, P.C., THE MOUNT SINAI
HOSPITAL, HOWARD CHOI, M.D., DANIELLE
PERRET, M.D., BRIAN RIORDAN, M.D., NEW
FRANKLIN REHABILITATION & HEALTH CARE
FACILITY, LLC, FRANKLIN CENTER FOR
REHABILITATION & NURSING, INC., FRANKLIN
CENTER FOR REHABILITATION & NURSING,
ISRAEL SHERMAN, WILLIAM DUKE, M.D.,
HILLSIDE MANOR COMPREHENSIVE CARE
CENTER, and THE NEW YORK HOSPITAL
MEDICAL CENTER OF QUEENS,

J. McKenna

Defendants.

-----x

The Defendant, HILLSIDE MANOR COMPREHENSIVE CARE CENTER (“Defendant”), by their attorneys, FUREY, FUREY, LEVERAGE, MANZIONE, WILLIAMS & DARLINGTON, P.C., answering the Complaint and Jury Demand of the plaintiff herein, upon information and belief:

AS AND FOR AN ANSWER TO NATURE OF THE CASE

FIRST: Defendant denies each and every allegation contained in paragraph “1” of the Complaint, and refers all questions of law to the Court.

SECOND: Defendant denies each and every allegation contained in paragraphs “2”, “3” and “4” of the Complaint and further denies knowledge or information thereof sufficient to form a belief as to all of the above-named co-defendants.

THIRD: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "5", "6", "7" and "8" of the Complaint.

AS AND FOR AN ANSWER TO JURISDICTION AND VENUE AND PARTIES

FOURTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "9" and "10" of the Complaint.

Plaintiff

FIFTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph "11" of the Complaint.

The Nursing Home Defendants

SIXTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38" and "39" of the Complaint.

SEVENTH: Defendant denies each and every allegation contained in paragraphs "40", "41", "42", "43", "44", "45" and "46" of the Complaint.

Sanjev Rajpal, M.D. and Class Surgery Brooklyn Group, P.C.

EIGHT: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "47", "48", "49", "50", "51", "52", "53", "54", "55" and "56" of the Complaint.

The Brookdale Hospital Medical Center

NINTH: Defendant denies any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "57", "58", "59", "60" and "61" of the Complaint.

The Mount Sinai Hospital, Howard Choi, M.D., Danille Perret, M.D., and Brian Riordan, M.D.

TENTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72" and "73" of the Complaint.

The New York Hospital Medical Center of Queens

ELEVENTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "74", "75", "76" and "77" of the Complaint.

AS AND FOR AN ANSWER TO GENERAL FACTUAL BACKGROUND

TWELFTH: Defendant denies any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "78", "79", "80" and "81" of the Complaint.

AS AN FOR AN ANSWER TO THE FIRST CAUSE OF ACTION AS TO: NEW FRANKLIN REHABILITATION & HEALTH CARE FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION & NURSING, INC., FRANKLIN CENTER FOR REHABILITATION & NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D.

THIRTEENTH: In answer to paragraph "82" of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to

paragraphs marked "1" through "81" of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

FORTEENTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95", "96" and "97" of the Complaint.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION AS TO: NEW FRANKLIN REHABILITATION & HEALTH CARE FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION & NURSING, INC., FRANKLIN CENTER FOR REHABILITATION & NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D. PURSUANT TO 42 U.S.C. § 1395i-3; 42 U.S.C. § 1396r and 42 CFR Part 483. et seq.

FIFTEENTH: In answer to paragraph "98" of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked "1" through "97" of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

SIXTEENTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "99", "100", "101", "102", "103", "104", "105", "106" and "107" of the Complaint.

SEVENTEENTH: Defendant denies each and every allegation contained in paragraph "108" of the Complaint.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION AS TO: NEW FRANKLIN REHABILITATION & HEALTH CARE FACILITY, LLC, FRANKLIN CENTER FOR REHABILITATION & NURSING, INC., FRANKLIN CENTER FOR REHABILITATION & NURSING, ISRAEL SHERMAN and WILLIAM DUKE, M.D., UNDER NEW YORK PUBLIC HEALTH LAW § 2801-d and 10 NYCRR § 415.12

EIGHTEENTH: In answer to paragraph "109" of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked "1" through "108" of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

NINETEENTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "110", "111", "112", "114", "115", "116", "118" and "119" of the Complaint herein.

TWENTIETH: Defendant denies each and every allegation, in the form alleged, contained in paragraphs "113" and "117" of the Complaint and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION AS TO: THE BROOKDALE HOSPITAL MEDICAL CENTER and SANJEEV RAJPAL, M.D.

TWENTY-FIRST: In answer to paragraph "120" of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked "1" through "119" of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

TWENTY-SECOND: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "121", "122", "123", "124", "125", "126", "127", "128" and "129" of the Complaint.

TWENTY-THIRD: Defendant denies each and every allegation contained in paragraph “130” of the Complaint and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION AS TO: SANJEEV RAJPAL, M.D. AND CLASS SURGERY BROOKLYN GROUP, P.C.

TWENTY-FOURTH: In answer to paragraph “131” of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked “1” through “130” of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

TWENTY-FIFTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs “132”, “133”, “134”, “135”, “136”, “137”, “138”, “139”, “140” and “141” of the Complaint.

TWENTY-SIXTH: Defendant denies each and every allegation contained in paragraph “142” of the Complaint and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION AS TO: THE MOUNT SINAI HOSPITAL, HOWARD CHOI, M.D., DANIELLE PERRET, M.D. and BRIAN RIORDAN, M.D.

TWENTY-SEVENTH: In answer to paragraph “143” of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked “1” through “142” of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

TWENTY-EIGHTH: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs “144”, “145”, “146”, “147”, “148”, “149”, “150” and “151” of the Complaint.

TWENTY-NINTH: Defendant denies each and every allegation contained in paragraph “152” of the Complaint.

THIRTIETH: Defendant denies each and every allegation contained in paragraph “153” of the Complaint herein and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE SEVENTH CAUSE OF ACTION AS TO: WILLIAM DUKE, M.D. and HILLSIDE MANOR COMPREHENSIVE CARE CENTER

THIRTY-FIRST: In answer to paragraph “154” of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked “1” through “153” of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

THIRTY-SECOND: Defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph “155” of the Complaint herein.

THIRTY-THIRD: Defendant denies each and every allegation contained in paragraph “156” of the Complaint herein.

THIRTY-FOURTH: Defendant denies each and every allegation contained in paragraphs “157”, “158”, “159”, “160”, “161”, “162”, “163” and “164”, and further denies any knowledge or information thereof sufficient to form a belief as to each and every allegation as to co-defendant WILLIAM DUKE, M.D. in the Complaint.

THIRTY-FIFTH: Defendant denies each and every allegation, in the form alleged, contained in paragraph “165” of the Complaint and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF ACTION AS TO: THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS and WILLIAM DUKE, M.D.

THIRTY-SIXTH: In answer to paragraph "166" of the Complaint, Defendant hereby repeats, reiterates and realleges each and every admission and denial set forth in answer to paragraphs marked "1" through "165" of the Complaint, inclusive with the same force and effect as if same were set forth herein at length.

THIRTY-SEVENTH: Defendant denies any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "167", "168", "169", "170", "171", "172", "173", "174" and "175" in the Complaint herein.

THIRTY-EIGHTH: Defendant denies each and every allegation contained in paragraph "176" of the Complaint.

THIRTY-NINTH: Defendant denies each and every allegation contained in paragraph "177" of the Complaint herein and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO DAMAGES

FORTIETH: Defendant denies each and every allegation contained in paragraph "178" of the Complaint herein.

FORTY-FIRST: Defendant demands that liability, if any, be apportioned.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-SECOND: Upon information and belief, the medical malpractice claims asserted by the plaintiff are barred in whole or in part by the applicable statute of limitations.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-THIRD: Upon information and belief, the injuries and/or damages allegedly sustained by the plaintiff were caused in whole or in part by the plaintiff's own culpable conduct and/or assumption of risk.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-FOURTH: Upon information and belief, the plaintiff has not effectuated valid service and therefore, this Court lacks jurisdiction over this Defendant.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-FIFTH: Upon information and belief, Defendant exercised all care reasonably necessary to prevent and limit the deprivation and injury for which liability is alleged by plaintiff.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-SIXTH: Upon information and belief, Defendant's facility ceased operations before the dates of the alleged malpractice and statutory violations.

AS AND FOR A SIXTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-SEVENTH: Upon information and belief, any damages sustained by the plaintiff was caused in whole or in part by the culpable conduct of the plaintiff, and/or plaintiff's damages were aggravated by his own culpable conduct.

AS AND FOR A SEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

FORTY-EIGHTH: Defendant will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

WHEREFORE, Defendant, HILLSIDE MANOR COMPREHENSIVE CARE CENTER, demands judgment dismissing the Complaint, together with interest, costs, disbursements or judgment over, as may be required by law.

Dated: Hempstead, New York
February 27, 2008

Yours, etc.,

FUREY, FUREY, LEVERAGE, MANZIONE,
WILLIAMS & DARLINGTON, P.C.

By: 
WILLIAM T. COLLINS, III (WTC 2249)

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Certificate of Mailing

I hereby certify that a copy of the foregoing **ANSWER** pursuant to Federal Rule of Civil Procedure §26 was mailed by First Class postage prepaid this 27th day of February, 2008, and was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules on Electronic Service, upon all counsel and parties of record as indicated on the Service List below:



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Service List

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Case No. 08 CV 1093 (Judge McKenna, U.S.D.J.)

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Plaintiff,

-against-

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HILLSIDE MANOR COMPREHENSIVE CARE
CENTER, and THE NEW YORK HOSPITAL
MEDICAL CENTER OF QUEENS,**

Defendants.

ANSWER

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